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Supreme Court of the United States

October Term 1952

No. 381

AMERICAN PRESIDENT LINES, LIMITED,
Petitioner

vs.

IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, UNITED STATES OF AMERICA, ET AL.,
Respondents

BRIEF FOR PETITIONER

AMERICAN PRESIDENT LINES, LIMITED

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BRIEF FOR PETITIONER

To the Honorable, the Chief Justice and the Justices of the Supreme Court of the United States:

STATEMENT OF JURISDICTION

Jurisdiction to review this case upon writ of certiorari is conferred upon this court by 28 U.S.C. § 1254(1); 62 Stat. 928.

STATEMENT OF THE CASE

The United States Immigration and Naturalization Service promulgated certain Rules on May 14, 1952 (Trans. fol. 2-7, including p. 1-6). In the Rules the term "alien" is defined (Trans. fol. 3 and 4, p. 3). The definition in the Rules is in irreconcilable conflict with the

definition in the Statute (§ 1, First Quota Act of 1917; 39 Stat. 874; 8 U.S.C.A. 173). The statutory definition of "alien" excludes "citizens and nationals of the United States". The Rules definition includes "all citizens and nationals" who seek admission into the United States on the ground that they are citizens or nationals. The Rules also impose detention expenses on aliens who have visas issued by a consular agent within 60 days of their foreign departure. The statute expressly forbids the assessment and collection of detention expenses in such circumstances (§ 3, Act of 1944; 58 Stat. 817; 8 U.S.C.A. 216).

A petition for review was filed by American President Lines, Ltd., a person legally wronged, adversely affected, and a party aggrieved (Trans. fol. 1-12, incl. pp. 1-10). The petition was filed in the United States Court of Appeals for the District of Columbia. A motion to dismiss was filed, argued and granted. The ground for dismissal was that the Court had no jurisdiction over the case (Trans. fol. 21-22, p. 17).

SPECIFICATION OF ERROR

The learned United States Court of Appeals for the District of Columbia erred in holding that it had no jurisdiction to hear and decide a petition for review of the final agency action of the Immigration and Naturalization Service when the issue was solely one of law, and the proceeding was appellate in character.

ARGUMENT

The sole legal question involved is: What is the meaning of Section 10 of the Administrative Procedure Act? (Chapt. 324, Sec. 10, 60 Stat. 243; 5 U.S.C.A. § 1009)

By the terms of this section, a party aggrieved has a right to review of a final agency action by "any applicable form of legal action . . . in any court of competent jurisdiction".

if:

1) Judicial review is not precluded by statute.
2) The matter complained of has not been committed by law to agency discretion.
3) There is no special review proceeding specified by statute.

Our proceeding falls outside these three exceptions. Therefore only two questions remain:

1) Is our Petition for Review an applicable form of legal action?
2) Is the United States Court of Appeals for the District of Columbia a court of competent jurisdiction to hear and decide it?

The first question involves a conflict in the circuits. A petition for review is an appellate proceeding, wherein the same proceeding is continued in another tribunal. *Blackmar* v. *Guerre*, 96 L. Ed. 315. The Third Circuit has held a petition for review an applicable form of legal proceeding. *U. S.* v. *Carusi*, 166 F. 2d 457-62. The Fifth Circuit has held a petition for review was not an applicable form of legal proceeding and has held that the party aggrieved must proceed by original action in the United States District Court. *City of Dallas Texas* v. *Rentzel*, 172 F. 2d 122. The United States Court of Appeals for the District of Columbia has merely held that it has no jurisdiction in such a proceeding and given no reason or argument for its holding.

A petition for review is the normal method fixed by statute for review of final agency actions in most categories; such as in reviews from:

1) Federal Communications Commission—C 1189 §2, 64 Stat. 1129; 5 U.S.C.A. 1032

2) Secretary of Agriculture—C. 1189 §2, 64 Stat. 1129; 5 U.S.C.A. 1032
3) Maritime Administration—C. 1189 §2, 64 Stat. 1129; 5 U.S.C.A. 1032
4) Civil Aeronautics Board—C. 601 Title X §1006, 52 Stat. 1024; 49 U.S.C.A. §646
5) Security and Exchange Commission—C. 404 §25, 48 Stat. 901; 15 U.S.C.A. §78y
6) Federal Power Commission—C. 687, Title II, 49 Stat. 838; 16 U.S.C.A. §825*l*
7) Federal Security Agency—C. 556, 52 Stat. 821; 15 U.S.C.A. §717r; C. 675 §701, 52 Stat. 1055; 21 U.S.C.A. 371(f)
8) Department of Labor—Ch. 676, Sec. 102, 52 Stat. 1060; 29 U.S.C.A. §210

There are many others.

Actions for review in the District Court of the United States are also statutory proceedings, but exist in a much more limited category.

1) Interstate Commerce Commission—C. 722 Tit. I Sec. 12, 54 Stat. 913; 49 U.S.C.A. §17(9) Tit. 49 §646.
This provides for a collateral attack in the United States District Court and prescribes a "suit" to enjoin enforcement, not an appellate review proceeding.
2) Civil Service Commission, violations of Hatch Act—C. 640 §1-6, 54 Stat. 767; 5 U.S.C.A. §118K(c).
This provides for an appellate proceeding in review in the District Courts of the United States.

Petitioner respectfully submits that the words "any applicable form of legal action . . . in any court of competent jurisdiction" cannot legally be interpreted because there is nothing to interpret. The words are plain and unambiguous. They must merely be applied. They cannot in law or logic be held to mean "an original action in the United States District Court for the District of Columbia." This is what the decision complained of really means. This is where it sets petitioner herein.

The Administrative Procedure Act (supra) is a remedial statute and should be construed so as to correct the evils at which it was aimed. This statute which gave to a party a right of review in "any court of competent jurisdiction" conferred on "any court of competent jurisdiction" the necessary jurisdiction to hear and decide the proceeding.

The form of the proceeding fixes the forum in which it should be brought.

If an appellate proceeding for review is brought an appellate tribunal is a court of competent jurisdiction.

If an original suit is selected for relief a United States District Court is a court of competent jurisdiction.

The Administrative Procedure Act (supra) limits a party aggrieved as to a selection of remedies by prohibitive statutes which existed at the time it became effective. It is the duty of the agency to show that a statute prohibits review in the United States Court of Appeals. A party aggrieved does not have to search prior law for a statute conferring jurisdiction on that court.

Jurisdiction is conferred by the Administrative Procedure Act (supra) itself.

When the review, as in this case, involves only a question of law, and can be presented on a transcript consisting solely of the Rules and Regulations complained of, why should a person be forced to make a collateral attack by original action in a United States District Court, and then take an appeal to the United States Court of Appeals in order to bring the identical question of law into focus when in the vast majority of similar cases arising out of a similar agencies the relief is available by the mere filing of a petition for review in the appellate tribunal as we have done in this case?

Can such a round-about procedure be justified under a statute the purpose of which was, "inter alia, to enable

public duties and powers to be established without the cumbersome and technical prerequisites of mandamus, certiorari injunction, prohibition and habeas corpus"? *Kristensen* v.*McGrath*, 179 F. 2d 796-8.

Perhaps a bit of the Congressional debate might be informative. 92 Cong. Rec. 2200-1 (Mar. 13, 1946)

> Mr. Austin: In the event there is no statutory method now in effect for review of a decision of an agency, does the distinguished author of the bill contemplate that by the language he has chosen he has given the right to the injured party or the complaining party to a review by such extraordinary remedies as injunction, prohibition, *quo warranto* and so forth?
>
> "Mr. McCarran: My answer is in the affirmative. That is true.
>
> "Mr. Austin: And does he contemplate that even where there is no statute authority for certiorari a party might bring certiorari against one of these agencies?
>
> "Mr. McCarran: Unless the basic statute prohibits it."

The reasoning of the Fifth Circuit in the *City of Dallas* v. *Rentzel* case (*supra*) is to the effect that the Circuit Courts are statutory courts and that their jurisdiction must be specifically granted by statute. Yet the United States District Courts are also statutory courts and the same silence which the Fifth Circuit says deprives it of jurisdiction must deprive the United States District Court of jurisdiction as well. If implemented this fallacy would deny relief altogether and render the review provisions of the Administrative Procedure Act (supra) wholly illusory.

The words are "any court of competent jurisdiction". If the Circuit Courts are outside of that definition then they are *not* "any courts of competent jurisdiction". When all the parts of a category are designated a single part cannot evade inclusion by asserting that it was not

particularly referred to by name. The power of Congress to legislate generally should not be curtailed by such trivial and illogical legalism.

CONCLUSION

The curse of the Judicial Process has been the reluctance of courts to entertain jurisdiction in the newer categories of an expanding civilization if by any means, no matter how technical or legalistic, they can construe themselves out of accepting jurisdiction. The rapid rise of the Administrative Process and its massive encroachment on the Judicial Process is largely the result of this policy on the part of the Judiciary and the administrative policy which is completely the reverse. The officials of the Judicial Process strive to freeze their jurisdiction and curtail it to conventional historical forms. The officials of the Administrative Process strive to expand their jurisdiction by every possible means even into prohibited areas.

This case exemplifies the divergence in policies of the two procedures.

First, we have the Immigration and Naturalization Service which has been given power to administer in the fields of Immigration and Naturalization. Its statutory power is solely over "aliens". The statute gives them rule-making power. It seeks to expand its jurisdiction to include "citizens", as well as "aliens".

It can't find justification in the statute so it seeks to gain jurisdiction by spurious definition. It defines "alien" so as to include every "citizen" or "national" who could ever come before it at any port of entry in the United States, and then it proceeds to exercise jurisdiction over "citizens" on the grounds that it is only dealing with "aliens" as it has defined the term. The fact that the

statute creating its authority defines "alien" in a conflicting manner does not present a barrier to its greed for an expanding executive power.

Second, the regulation misdefining "alien" is challenged in the courts. The vice of the regulation is too patent to be argued. So legalism is sought by the Department of Justice to avoid a decision. The Court is asked to hold that it has no jurisdiction although the proceeding is appellate and the grant of jurisdiction is sweeping. To nullify the Administrative Procedure Act (supra) by restrictive interpretation is the objective. The Court sees an opportunity to avoid jurisdiction so by a per curiam decision which is terse and uninformative it announces that it has no jurisdiction and the party aggrieved stands thwarted —at least temporarily.

Thus the divergent policies of the Judicial Process and the Administrative Process join to thwart the legislative relief provided for in a broad remedial statute.

Like the harpies, of which Virgil writes, who stand behind the hungering spirits and snatch the food from their hands or foul it to a filthiness beyond all possible use our two great Governmental Processes have snatched the heart of the legislative grant from the hands of a party aggrieved or have sought to render it less usable by nullifying one of its ameliorating provisions.

The Supreme Court of the United States is the final hope of all parties aggrieved. In this proceeding the statute will be given life or death or condemned to a shriveled and impotent existence somewhere between.

Petitioner hopes the great Supreme Court of the United States will convey to its inferior tribunals through vigorous decision the scriptural message, "Do not weary of well doing" or gently chide them with the Miltonic phrase "Why move thy feet so slow to what is best".

To the Administrative Agency involved and to others, wide scattered, we hope the Supreme Court of the United States by decision on the merits will figuratively point to the provisions of the Administrative Procedure Act and to the law and decisions limiting rule making to the statutory grant and say, as it is written the Lord said to the sea on the day of creation—

> "Hitherto shalt thou come and no farther. Here shall thy proud waves be stayed."

Respectfully submitted,

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